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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,057	02/03/2004	Thomas E. Kahan		3931
7590	05/20/2005		EXAMINER	
THOMAS E. KAHAN 7572 VALENTINE ST. OAKLAND, CA 94605			STERLING, AMY JO	
		ART UNIT	PAPER NUMBER	3632

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/772,057	KAHAN, THOMAS E. W	
	<b>Examiner</b>	<b>Art Unit</b>	
	Amy J. Sterling	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 February 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 February 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

This is the **Final Office Action** for application number 10/772,057 Flexible Multi-Gauge Attachment Device, filed on 2/3/04. Claims 2-11 are pending. This **Final Office Action** is in response to applicant's reply dated 2/22/05. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7 and 11 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The barrel being "rigid and inflexible" is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

The Specification teaches that the "support barrel is made from a piece of rubber as a flexible sleeve-clamp" (Page 6, line 19).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 2-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 2-11, the phrase "rubber- like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "rubber- like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claims 2 and 8 recites that the "post-receiving barrel [is] made form a flexible rubber-like material". Claims 7 and 11 recites that the "post-receiving barrel is rigid and inflexible and it is unclear how the post-receiving barrel can have both properties.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 3252241 to Gould and in view of United States Patent No. 5340069 to Niemeyer.

The patent to Gould discloses a device having a mount (15") the device made from a flexible or rigid rubber-like material (See Col. 2, line 38 for material) having a pair of opposite ends with a hollow post receiving barrel connected at one end of the mount and connected to a mid-portion a base at the other end, so that two end portions of the base extend out from either side, the barrel extending upright from the base. Gould teaches that the base has an elongated sleeve-clamp having a pair of opposite end portions a C-shaped cross-sectional configuration, sized to wrap an extend around at least a major portion of any elongated mounting support of a predetermined diameter.

Gould does not disclose wherein the end portions of the base are secured to an elongated mounting support by a pair of ties and a tie positioning recess on the end portions and wherein the end portions each have a tie positioning recess.

Niemeyer teaches a mount having a C-shaped base (50) with tie positioning recesses (See Fig. 4 ) on the end portions which has a pair of end portions secured to an elongated mounting support by a pair of ties, used for a secure attachment of the device to the support. Therefore it would have been obvious to one of ordinary skill in the art from the teachings of Niemeyer to have used a pair of ties in order to further secure the device to the desired object.

Claims 3-5 and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 3252241 to Gould and in view of United States Patent No. 5340069 to Niemeyer as applied to claim 2 above and further in view of United States Patent No. 6446474 to Tabacchi et al.

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Gould and Niemeyer show the basic inventive concept as shown above with the exception that they do not specifically teach that the ties are plastic cable ties that are an elongated band and have an attachment portion at one end, which has a tie positioning recess.

Tabacchi et al. teaches a plastic (See Col. 1, line 59) cable tie (10) which has an attachment portion (12) at one end, used for securing any desired objects together. Therefore it would have been obvious to one of ordinary skill in the art from the teachings of Tabacchi et al. to have used a plastic ties with an attachment portion with a tie positioning recess at one end, in order to further secure the device to the desired object.

### ***Response to Arguments***

Applicant's arguments with respect to claims 2-11 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 571-272-6815. The fax machine number for the Technology center is 703-872-9306 (formal amendments) or 571-273-6823 (informal amendments and communications). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.

  
AJS  
Amy J. Sterling  
5/14/05

  
ANITA KING  
PRIMARY EXAMINER